

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

LA.App..No. 628 of 2000(B)

L.A.R. NO.369/1994 OF THE IIIRD ADDL.SUB COURT, ERNAKULAM.

APPELLANT/RESPONDENT:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI. MANOJ KUMAR.

RESPONDENT/CLAIMANT:

RAGHAVAN, S/O. SAROJINI AMMA,
VIJAYAMANDIRAM, KIZHAKE CHALAKUDY,
MUKUNDAPURAM TALUK.

BY ADV. SRI.C.K.ABDUL RAHIM.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P. NO. 5757/2000 IN L.A.A. NO. 628/2000

DISMISSED

SD/- KURIAN JOSEPH, JUDGE,

28/09/2007.

SD/- HARUN-UL-RASHID, JUDGE.

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prv.

KURIAN JOSEPH & HARUN-UL-RASHID, J.

L.A.A No. 628 of 2000

Dated this the 28th day of September 2007

JUDGMENT

Harun-Ui-Rashid ,J

This appeal was filed by the State of Kerala against the judgment and decree dated 29-10-1998 in L.A.R 369/1994. An extent of 3.05 Ares of land comprised in Survey No. 12/14 and 12/16 of Thrikkakara North Village in Kanayannur Taluk was acquired for the purpose of four lining of N.H.47 . Section 4(1) notification under the L.A Act dated 4-11-1991 was issued. The Land Acquisition Officer fixed the land value at the rate of Rs. 66,430 per are. At the instance of the claimant the matter was referred to the Civil court for re-determination of the compensation awarded for the land, structures and other improvements. The claimant in support of the claim for enhanced compensation, examined AW1 & AW2 and marked Ext.A1 on his side and Ext.B1 was marked on the side of the respondent.

2. The acquired properties are situate on the Edapally Bye pass junction where NH 47 joins the Edappally junction. According to the claimant the locality wherein the acquired land situate is a commercially important area. Several commercial institutions and other institutions are situated near to the property and therefore at the time of 4(1) notification the property would have fetch a minimum price of Rs. 2 lakhs per cent. He had also produced Ext.A1 Judgment in LAR 120/1994 which according to

him relates to the adjacent land. Relying on Ext A1 judgment which has become final the court below re-fixed the land value at the rate of Rs. 98,800/- per are.

3. An advocate commissioner appointed in the case has reported in Ext. C1 that if the proposed bridge is constructed it will not be possible for the claimant to conduct his saw mill in the balance property left after the acquisition. The Commissioner also reported that the claimant is not in a position to run his saw mill in the property even on the date of inspection by the Commissioner. Because of the consequences of the acquisition, the saw mill was found to be shifted to some other place. The claimant also gave evidence that consequent on acquisition of his property he is unable to run his saw mill and he had to incur huge loss by shifting his place of business.

4. He further deposed that he is entitled to get the rates mentioned at the engineer's valuation statement towards expenses for shifting. Considering the facts and circumstances including the Commission report, the court below held that an amount equivalent to 80% shown in the engineer's statement towards labour charges for dismantling, and cost of reconstruction of the building and for re-setting the machinery will be a reasonable amount for settling the claims of the claimant under the head of shifting charges. After entering the said finding the court below fixed Rs. 1,78,086/- as shifting charges. The court

below also take the view that since the claimant is entitled for shifting charges, he can also claim compensation for loss of income for reasonable time needed for shifting his place of business. According to the learned Sub judge six months period will be a reasonable period for the claimant to shift his business to some other place. The claimant claims that an income from his business on an average case is Rs. 1,000/- per day. The court below of the view that the nature of the business carried on by the claimant as evidenced by the Commissioners report, It can be safely be held that such a business would fetch at least a minimum profit of 500/- per day. The court below calculated 150 working days during the period of six months and held that the claimant is entitled to 75,000/- towards loss of income for six months.

5. The balance land left after acquisition is 7.55 cents of land which according to the claimant will be rendered useless for construction purpose. The Court below on facts also found that the said balance extent will be rendered useless for construction purpose due to acquisition and therefore the claimant can claim compensation on account of the injurious affection. The court below awarded 25 % of the land value as compensation towards injurious affection and awarded an amount of Rs, 75,500/-

6. Thus the court below granted an additional compensation towards the land value at the rate of Rs. 32,370 per are for 3.05 ares, Rs. 1,78,086/- towards shifting charges, Rs.75,000/- towards loss of income for the period of six months required for shifting the place of business, Rs.75, 500, towards injurious affection on 7.55 Cents remaining useless, and statutory benefits.

7. On appreciation of the oral and documentary evidence adduced before the court below in support of the claim for enhanced compensation, we are of the view that the re-determination of land value the compensation awarded for injurious affection and shifting charges are fair and reasonable. The fixation of compensation for loss of income during the period for which the claimant was forced to stop his business due to acquisition and the fixing of the period of six months as reasonable time for the claimant to shift his business to some other place and award of Rs.75,000/- towards the loss of income for six months time, according to us is not fair and reasonable. We are of the view that the claimant can shift his place of business within a period of two months. Adopting the same method of valuation we find that the claimant will be having business for 50 days during the period of two months. So calculated at the rate as fixed by the court below, the claimant will be entitled to get only Rs. 500 x 50= 25,000/- towards loss of income.

Accordingly we re-fix the compensation towards loss of income at Rs, 25,000/- The court below granted statutory benefits under Section 23 (1A) & 23 (2) of the L.A. Act not only for the enhanced land value but also granted the benefits for the amount of compensation under various heads. We make it clear that the claimant is entitled to the said benefits only for the land value and not for the compensation amount fixed towards shifting charges and towards injurious affection.

We modify the decree and judgment in appeal as aforesaid. There will be no order as to costs.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

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